



Department  
for Education

# **Making significant changes ('prescribed alterations') to maintained schools**

**Statutory guidance for proposers and decision-makers**

**October 2018**

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# 1: Summary

## About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when making ‘prescribed alterations’ to maintained schools.

The purpose of this guidance is to ensure that good quality school places can be provided quickly where they are needed; that local authorities (LAs) and governing bodies (GBs) do not take decisions that will have a negative impact on other schools in the area; and that changes can be implemented quickly and effectively where there is a strong case for doing so. In line with these aims it is expected that, where possible, additional new places will only be provided at schools that have an overall Ofsted rating of ‘good’ or ‘outstanding’. Schools which do not fall within the above categories should only be expanded where there are no other viable options.

A GB, LA or the [Schools Adjudicator](#) must have regard to this guidance when exercising functions under [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) (‘the Prescribed Alterations Regulations’). It should be read in conjunction with Parts 2 and 3 and Schedule 3 of the [Education and Inspections Act \(EIA\) 2006](#) and the Prescribed Alterations Regulations. It also relates to the [Establishment and Discontinuance Regulations](#) and [The School Organisation \(Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations \(2007\)](#) (‘the ‘Removal Regulations’).

It is the responsibility of LAs and GBs to ensure that they act in accordance with the relevant legislation when making changes to a maintained school and they are advised to seek independent legal advice where appropriate.

## Review date

This guidance will be reviewed in October 2019.

## Who is this guidance for?

Those proposing to make changes and making decisions on changes to maintained schools (e.g. GBs, LAs and the Schools Adjudicator), and for information purposes for those affected by a proposal (trustees of the school, diocese or relevant diocesan board, any other relevant faith body, parents etc.).

This guidance is relevant to all categories of maintained schools (as defined in section 20 of the [School Standards and Framework Act \(SSFA\) 1998](#)), unless explicitly stated. It is not relevant to [Pupil Referral Units](#). Separate advice [on making significant changes to an academy](#) and [opening and closing a maintained school](#) is available.

Please refer to the '[Further Information](#)' section for the full website address should you be unable to access documents via the hyperlinks provided.

## Terminology

Definitions of common terms used in this guidance:

**Schools with a religious character** - All schools designated as having a religious character in accordance with the [SSFA](#).

**Foundation Trust** - For the purpose of this guidance the term 'foundation trust' refers to a foundation complying with the requirements set out in section 23A of the SSFA.

**Parent(s)** - The Education Act 1996 defines 'parent' as including someone who has care of, or legal responsibility for, the child. Therefore, a parent can include, for example, a grandparent, other family member or foster carer if they have care of or responsibility for the child.

## Main points

- All proposals for prescribed alterations must follow the processes set out in this guidance.
- Where a LA proposes to expand a school that is eligible for intervention as set out in Section 59 of the [Education and Inspections Act 2006](#), they should copy the proposal to the relevant [Regional Schools Commissioner \(RSC\)](#) at the point of publication.
- To enable the department to monitor potentially contentious proposals, the proposer should copy any proposal, which falls within the definitions set out in [part 3](#), to the School Organisation mailbox as soon as it is published [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk).
- LAs and GBs proposing to make a significant change to a school which has been designated as having a religious character should engage the trustees of the school, and in the case of Church schools the diocese or relevant

diocesan board, or any other relevant faith body, where appropriate at the earliest opportunity.

- Where a LA is the decision maker, it must make a decision within a period of two months of the end of the representation period. Where a decision is not made within this time frame, the LA must refer the proposal to the Schools Adjudicator for a decision.
- It is not possible for any school to gain, lose or change religious character through a change of category. Information on the process to be followed is available in the [opening and closing maintained schools guidance](#).
- Once a decision has been made the proposer (GB or LA) must make the necessary changes to the school's record in the department's system [Get Information About Schools](#) (GIAS) by the date the change is implemented.
- Where a school wishes to change their name, the GB will need to amend the Instrument of Government in line with regulation 30 of [The School Governance \(Constitution\) \(England\) Regulations 2012](#). Once that is done, either the school or the LA will need to update the school record in the department's GIAS system.

## 2: Prescribed alteration changes

### Enlargement of premises (expansion)

Under section 14 of the [Education Act 1996](#), LAs have a statutory duty to ensure that there are sufficient schools for primary and secondary education in their areas. The department expects LAs to manage the school estate efficiently and to reduce or find alternative uses for surplus capacity (for example, increasing the provision of early education and childcare) to avoid detriment to schools' educational offer or financial position. LAs are encouraged to consider the use of modular construction solutions for any physical building expansion and to consider all options for the reutilisation of space including via remodelling, amalgamations, or closure where this would be the best course of action.

Where additional places are needed, including where there is a local demand for a particular category of places (for example in schools designated as having a religious character), the LA can propose an enlargement of the capacity<sup>1</sup> of premises.

The statutory process should be followed to enlarge premises as set out in the [Prescribed Alterations Regulations](#) (see [part 5](#)) if:

- the proposed enlargement is permanent (longer than three years) and **would increase the capacity of the school** by:
  - more than 30 pupils; **and**
  - 25% or 200 pupils (whichever is the lesser).
- the proposal involves making permanent any temporary enlargement (which was intended to be in place for no more than three years) that meets the above threshold.

GBs of all categories of mainstream schools and LAs can propose small scale expansions that do not meet the thresholds above without the need to follow the formal statutory process in [part 4](#). In many cases this can be achieved solely by increasing the school's published admissions number<sup>2</sup> (PAN); please see the [School Admissions Code](#). The thresholds do not, however, apply to special schools. Details of how special schools can increase their intake<sup>3</sup> are covered below.

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<sup>1</sup> Net capacity as calculated using the DfE Guidance Assessing the Net Capacity of Schools (2002).

<sup>2</sup> All admission authorities must set a published admission number (PAN) for each 'relevant age group' when they determine their admission arrangements. So, if a school has an admissions number of 120 pupils for Year 7, that is its PAN.

<sup>3</sup> The number of pupils admitted into the school at a particular time

## Examples of when mainstream schools would/would not need to publish ‘enlargement’ proposals

A secondary school with a capacity of 750 (5 form of entry - 30 pupils per class, 5 year groups) **could** enlarge its premises to add 1 form of entry (30 extra pupils x 5 year groups = increase of 150 pupils) bringing the capacity to 900 pupils, **without** having to publish statutory proposals. Although the increase would be by ‘more than 30’ pupils, it is less than ‘200’, and also less than ‘25%’ of the current capacity (i.e. by less than 187).

A small primary school with a capacity of 50 **could** enlarge its premises to increase its capacity by up to 29 pupils **without** having to publish statutory proposals, because although it would be more than ‘25%’, it is less than 30.

A school of any size enlarging its premises to enable it to add 300 places **would** need to follow the statutory process as the increase would be **both** ‘more than 30’ **and** ‘200’ (it may or may not be more than ‘25%’ but that is irrelevant if the 200 threshold would be met).

A primary school with a capacity of 210 enlarging its premises to enable it to add 105 places (1.5 forms of entry  $45 \times 7 = 315$ ), **would** need to follow the statutory process as the increase would be ‘more than 30’ and **more than** ‘25%’ (it would be less than 200 but this is irrelevant as the 25% threshold would be met).

## The quality of new places created through expansion

We expect LAs to consider a range of performance indicators and financial data, before deciding whether a school should be expanded. Where schools are underperforming, we would not expect them to expand, unless there is a strong case that this would help to raise standards. We expect LAs to create new places in schools that have an overall Ofsted rating of ‘good’ or ‘outstanding’. If, however, there are no other feasible ways to create new places in the area, the LA should notify their Pupil Places Planning adviser<sup>4</sup>. In cases where there is a proposal to expand a school that is rated inadequate, the LA should also send a copy of the proposal to the [relevant RSC](#) so that they can ensure appropriate intervention strategies are in place.

The table below sets out who can propose an enlargement of premises and what process must be followed:

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<sup>4</sup> [Advisers.PPP@education.gov.uk](mailto:Advisers.PPP@education.gov.uk)

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community	Enlargement of premises that meets the threshold	Statutory process	LA	CofE Diocese RC Diocese
LA for voluntary or foundation	Enlargement of premises that meets the threshold	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
LA for voluntary and foundation	Enlargement of premises (below the threshold)	Non statutory process	LA	N/A
GB of all categories mainstream	Enlargement of premises (below the threshold)	Non statutory process	GB	N/A

## Expansion onto an additional site (or ‘satellite sites’)

Where proposers seek to expand onto an additional site they will need to ensure that the new provision is genuinely a change to an existing school and not in reality the establishment of a new school. Where a LA decides that a new school is needed to meet basic need, they should refer to the [guidance for opening new schools](#).

Decisions about whether a proposal represents a genuine expansion will need to be taken on a case-by-case basis, but proposers and decision makers will need to consider this non-exhaustive list of factors which are intended to expose the extent to which the new site is integrated with the existing site, and the extent to which it will serve the same community as the existing site:

### The reasons for the expansion

- What is the rationale for this approach and this particular site?

### Admission and curriculum arrangements

- How will the new site be used (e.g. which age groups/pupils will it serve)?
- What will the admission arrangements be?
- Will there be movement of pupils between sites?

## **Governance and administration**

- How will whole school activities be managed?
- Will staff be employed on contracts to work on both sites? How frequently will they do so?
- What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same GB and the same school leadership team)?

## **Physical characteristics of the school**

- How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
- Is the new site in an area that is easily accessible to the community that the current school serves?

The purpose of considering these factors is to determine the level of integration between the two sites; the more integration, the more likely the change will be considered as an expansion.

LAs should copy any proposal to expand a school onto a satellite site to [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk) for monitoring purposes.

## **Expansion of existing grammar schools**

Legislation prohibits the establishment of new grammar schools<sup>5</sup>. Expansion of any existing grammar school onto a satellite site can only happen if the new site is genuinely part of the existing school. Decision-makers must consider the factors listed above when deciding if an expansion is a legitimate enlargement of an existing school.

## **Changes to the published admissions number (PAN) where an enlargement of premises has not taken place**

Admission authorities<sup>6</sup> must set a PAN for each 'relevant age group' when determining their admission arrangements. If an admission authority of a mainstream school wishes to increase or decrease PAN, without increasing the overall physical

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<sup>5</sup> Except where a grammar school is replacing one of more existing grammar schools

<sup>6</sup> The LA in the case of community and voluntary controlled (VC) schools or the GB in the case of voluntary aided (VA) and foundation schools

capacity of the buildings, this would be classed as an admissions change, not a prescribed alteration. The statutory process described in this guidance would not need to be followed (please see the [School Admissions Code](#) for further details of the processes admission authorities must follow).

## Change in number of pupils in a special school

The School Admissions Code does not apply to special schools. GBs of all categories of special school, and LAs for community special schools, may seek to increase the number of places by following the statutory process in [part 5](#), if the increase is by:

- 10%; or
- 20 pupils (or 5 pupils if the school is a boarding-only school),

(whichever is the smaller number).

The exception to this is where a special school is established in a hospital.

GBs of all categories of special school, and LAs for community special schools, may seek to decrease the number of pupils, by following the statutory process in [part 5](#).

The table below sets out who can propose a change in the number of pupils in a special school and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
GB foundation special	Increase by 10% or 20 pupils (5 for boarding special) or decrease numbers	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB community special	Increase by 10% or 20 pupils (5 for boarding special) or decrease numbers	Statutory process	LA	CofE Diocese RC Diocese
LA for community special and foundation special	Increase by 10% or 20 pupils (5 for boarding special)	Statutory process	LA	CofE Diocese RC Diocese

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for foundation special	Increase by 10% or 20 pupils (5 for boarding special)	Statutory process	LA	GB/Trustees
LA for community special	Decrease of numbers	Statutory process	LA	CofE Diocese RC Diocese

## Change of age range

For changes that are expected to be in place for more than 2 years (as these are considered permanent increases):

**LAs** can propose:

- a change of age range of up to 2 years (except for adding or removing a sixth form) for voluntary and foundation schools by following the non-statutory process, see [part 4](#).
- a change of age range of 1 year or more for community schools (including the adding or removal of sixth form or nursery provision) and community special schools or alter the upper age limit of a foundation or voluntary school to add sixth form provision by following the statutory process, see [part 5](#).

**GBs** of foundation and voluntary schools can propose:

- an age range change of up to 2 years (except for adding or removing a sixth form) by following the non-statutory process, see [part 4](#).
- an age range change of 3 years or more (including adding or removing a sixth form) by following the statutory process, see [part 5](#).

Before making such a proposal, the GB should consult with LAs, and where the school is designated as having a religious character the trustees of the school, dioceses or relevant diocesan boards, or any other relevant faith body, to understand the place management needs of the area.

**GBs** of community schools can propose the alteration of their upper age limit to add sixth form provision following the statutory process, see [part 5](#).

**GBs** of community special and foundation special schools can propose a change of age range of 1 year or more following the statutory process, see [part 5](#).

Where a proposed age range change would also require an expansion of the school's premises, the LA or GB must also ensure that they act in accordance with the requirements for proposals for the [enlargement of premises](#).

In cases where the age-range of the school has changed, this should be altered on GIAS. For example if the age-range is changed so that the school no longer caters for pupils below compulsory school age, the lower age range of the school would need to be increased so as not to include that age group.

The table below sets out who can propose a change of age range and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for voluntary and foundation	Alteration of upper or lower age range of up to 2 years (excluding adding or removing a sixth form)	Non statutory process	LA	NA
GB of voluntary and foundation	Alteration of upper or lower age range by up to 2 years (excluding adding or removing a sixth form)	Non statutory process	GB	N/A
GB of voluntary and foundation	Alteration of upper or lower age range by 3 years or more	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
LA for community and community special	Alteration of upper or lower age range by 1 year or more (for community schools including the adding or removal of sixth form or nursery provision)	Statutory process	LA	CofE Diocese RC Diocese
GB foundation special	Alteration of upper or lower age range by one year or more	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB community special	Alteration of upper or lower age range by one year or more	Statutory process	LA	CofE Diocese RC Diocese
LA for community	Alteration of upper age range so as to add or	Statutory process	LA	CofE Diocese RC Diocese

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
	remove sixth form provision			
LA for voluntary and foundation	Alteration of upper age range so as to add sixth form provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of voluntary and foundation	Alteration of upper age range so as to add sixth form provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of community	Alteration of upper age range so as to add sixth form provision	Statutory process	LA	CofE Diocese RC Diocese
GB of voluntary and foundation	Alteration of upper age range so as to remove sixth form provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees

## Adding a sixth form

The department wants to ensure that all temporary (which is anticipated will be in place for no more than 2 years) and permanent provision is of the highest quality and provides genuine value for money. There is a departmental expectation that proposals for the addition of sixth form provision will only be put forward for secondary schools that are rated as 'good' or 'outstanding' by Ofsted. Proposers should also consider the supply of other local post-16 provision in the area and assess if there is a genuine need for the additional provision.

In deciding whether new sixth form provision would be appropriate, proposers and decision makers should consider the following guidelines:

- **Quality:** The quality of pre-16 education must be good or outstanding (as rated by Ofsted) and the school must have a history of positive Progress 8 scores (above 0);
- **Size:** The proposed sixth form will provide at least 200 places and there should be sufficient demand for those places;
- **Subject Breadth:** The proposed sixth form should - either directly or through partnership - offer a minimum of 15 A level subjects. LAs may wish to consider the benefits of delivering a broader A level curriculum through

partnership arrangements with other school sixth forms. Working with others can offer opportunities to:

- Improve choice and attainment for pupils
- Deliver new, improved or more integrated services
- Make efficiency savings through sharing costs
- Develop a stronger, more united voice
- Share knowledge and information.

Schools proposing a partnership arrangement must include evidence of how this will operate on a day-to-day basis, including timetabling and the deployment of staff;

- **Demand:** There should be a clear demand for additional post-16 places in the local area (including evidence of a shortage of post-16 places and a consideration of the quality of Level 3 provision in the area). The proposed sixth form should not create excessive surplus places or have a detrimental effect on other high quality post-16 provision in the local area;
- **Financial viability:** The proposed sixth form should be financially viable (there must be evidence of financial resilience should student numbers fall). The average class size should be at least 15, unless there is a clear educational argument to run smaller classes – for example to build the initial credibility of courses with a view to increasing class size in future.

Not all changes in age range to add a sixth form will necessitate a change to the school's admissions arrangements, for example a school may set up sixth form provision solely for its own pupils. However, if the intention is to also admit external applicants to the sixth form the school will need to adopt a sixth form PAN and may also wish to add academic entry requirements on changing its age-range.

The addition of post-16 provision requires a change of age-range, therefore, where a decision-maker is considering a proposal to add post-16 provision, they should refer to the section on changing an age range.

## Closing an additional site

For foundation and voluntary schools that are already operating on a satellite site(s), GBs must follow the statutory process in [part 5](#) if they are proposing the closure of one or more sites, where the main entrance at any of the school's remaining sites is one mile or more from the main entrance of the site which is to be closed. The LA may make such a proposal for a community school following the statutory process in [part 5](#).

The table below sets out who can propose the closure of an additional site and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community	Closure of one or multiple sites	Statutory process	LA	CofE Diocese RC Diocese
GB voluntary or foundation	Closure of one or multiple sites	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees

## Transfer to a new site

Where the main entrance of the proposed new site for a school would be more than two miles from the main entrance of the current school site, or if the proposed new site is within the area of another LA:

- **LA**s can propose the transfer to an entirely new site for community schools, community special schools and maintained nursery schools following the statutory process in [part 5](#).
- **GBs of voluntary, foundation, foundation special and community special** schools can also propose a transfer to a new site following the statutory process in [part 5](#).

The table below sets out who can propose a transfer to a new site and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community, community special and maintained nursery	Transfer to new site	Statutory process	LA	CofE Diocese RC Diocese
GB voluntary foundation or foundation special	Transfer to new site	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB community special	Transfer to new site	Statutory process	LA	CofE Diocese RC Diocese

## Changes of category

**GBs** of all categories of maintained schools, apart from GBs of foundation special schools, may propose to change category by following the statutory process. The [addition or removal of a foundation](#) is described in [part 6](#). Where GBs are proposing a change of category covering a change in provision (e.g. from mainstream to special school) they are encouraged to seek advice by emailing [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk).

For a proposal to change the category of a school to voluntary-aided, the decision-maker should be satisfied that the GB and/or the foundation are able and willing to meet their financial responsibilities for building work. The decision-maker may wish to consider whether the GB has access to sufficient funds to enable it to meet 10% of its capital expenditure for at least five years from the date of implementation, taking into account anticipated building projects.

Guidance on adding or changing a designated religious character can be found in the [Opening and closing maintained schools](#) guidance.

The table below sets out who can propose a change of category and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
GB of voluntary	VC to VA VA to VC	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of voluntary	VC or VA to foundation school VC or VA to foundation school and acquire a foundation VC or VA to foundation school, acquire a foundation and majority foundation governors on GB	Statutory process	GB	For proposals at a VA school when decided by the GB: LA CofE Diocese RC Diocese
GB of foundation	Foundation school to VC or VA	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
GB of foundation	Acquire foundation Acquire a majority of foundation governors on the GB  Removal of foundation and/or reduction in majority of foundation governors on GB	Statutory process	GB	N/A
GB of community	Community to VC or VA	Statutory process	LA	CofE Diocese RC Diocese
GB of community	Community to foundation school Community to foundation school and acquire foundation Community to foundation school and acquire majority of foundation governors on GB	Statutory process	GB	N/A
GB of foundation special	Remove foundation and/or reduce majority of foundation governors on GB	Statutory process	GB	N/A

## Single sex school becoming co-educational (or vice versa)

Proposers can seek to change their school from single sex to co-educational (or vice versa) when they can show that this would better serve their local community. A co-educational school cannot change its nursery or post-16 provision to single sex. When making a decision, LAs will need to consider the demand for and balance of school places for boys and girls in line with the [Equality Act 2010](#).

The table below sets out who can change a school from single sex to co-educational (or vice versa) and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community or community special	To co-ed or single sex provision	Statutory process	LA	CofE Diocese RC Diocese
GB of foundation, foundation special or voluntary	To co-ed or single sex provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of community special	To co-ed or single sex provision	Statutory process	LA	CofE Diocese RC Diocese

## Mainstream school: establish/remove/alter special educational needs (SEN) provision

When considering any reorganisation of provision that the LA recognises as reserved for pupils with special educational needs, including that which might lead to children being displaced, proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children.

The table below sets out who can propose to establish, remove or alter SEN provision and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community	Establish, remove or alter SEN provision	Statutory process	LA	CofE Diocese RC Diocese
LA for voluntary and foundation	Establish or remove SEN provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of foundation	Establish, remove or alter SEN provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
and voluntary				

## Change the types of need catered for by a special school

The table below sets out who can propose a change to the type of need catered for by a special school and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community special	Change designation and categories of SEN provision	Statutory process	LA	CofE Diocese RC Diocese
LA for foundation special	Change designation and categories of SEN provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of community special	Change designation and categories of SEN provision	Statutory process	LA	CofE Diocese RC Diocese
GB of foundation special	Change designation and categories of SEN provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees

## Boarding provision

The introduction of boarding provision can require the statutory process to be followed (depending on the type of school in question – see table below). LAs and GBs will need to consider how the Prescribed Alterations Regulations apply in conjunction with this guidance and, where there is any doubt, seek independent legal advice, as the department cannot advise on individual cases.

**LAs** can propose for:

- community schools; the establishment, removal or alteration (decrease by 50 pupils or 50% whichever is the greater) of boarding provision by following the statutory process in [part 5](#).

- community special schools; the establishment, removal or alteration (increase or decrease by 5 places or more where there are both day and boarding places) of boarding provision following the statutory process in [part 5](#).

**GBs** of voluntary and foundation schools can propose the establishment or increase of boarding provision following the non-statutory process in [part 4](#) and the removal or alteration (decrease by 50 pupils or 50% whichever is the greater) of boarding provision by following the statutory process in [part 5](#).

**GBs** of special schools can add or remove boarding provision or, where the school makes provision for day and boarding pupils, can increase or decrease boarding provision by five pupils or more following the statutory process in [part 5](#).

The table below sets out who can propose to establish, change or remove boarding provision and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community	Add, remove or change (decrease by 50 pupils or 50% whichever is greater) boarding provision	Statutory process	LA	CofE Diocese RC Diocese
LA for community special	Add, remove or change (increase or decrease by 5 pupils or more) boarding provision	Statutory process	LA	CofE Diocese RC Diocese
GB of foundation or voluntary	Add boarding provision	Non-statutory process	GB	N/A
GB of foundation or voluntary	Remove or change (decrease by 50 pupils or 50% whichever is greater) boarding provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of foundation special	Add, remove or change (increase or decrease by 5 pupils or more) boarding provision	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of community special	Add, remove or change (increase or decrease by 5 pupils or more) boarding provision	Statutory process	LA	CofE Diocese RC Diocese

In making a decision on a proposal to remove boarding provision from a school, the decision-maker should consider whether there is a state funded boarding school within reasonable distance from the school and whether there are satisfactory alternative boarding arrangements for those currently in the school and those who may need boarding places in the foreseeable future, including the children of service families.

## **Remove selective admission arrangements at a grammar school**

The table below sets out who can propose the removal of selective admission arrangements<sup>7</sup> and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
GB of voluntary or foundation	Remove selective admission arrangements	Statutory process	LA	CofE Diocese RC Diocese GB/Trustees
GB of community	Remove selective admission arrangements	Statutory process	LA	CofE Diocese RC Diocese

## **Amalgamations**

The LA and/or GB (depending on school category) can publish a proposal to close one school (or more) and enlarge/change the age range/transfer site (following the statutory process as/when necessary) of an existing school, to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its phase has changed.

Alternatively, LAs may propose to close all the schools involved and replace them with a new school. For more information, please consult the separate guidance on [opening and closing a maintained school](#).

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<sup>7</sup> In accordance with s.109 (1) of the School Standards and Frameworks Act 1998

### 3: Contentious proposals

When proposing changes, LA's and GBs should act reasonably, and in line with the principles of public law, to ensure that the changes do not have a negative impact on the education of pupils in the area.

To enable the department to monitor potentially controversial proposals, LAs and GBs should notify [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk) of the publication of any proposals which would:

- involve [expansion onto a separate 'satellite' site](#); or
- where objections have been raised that the proposed change could potentially undermine the quality of education in the local area by creating additional places where there is surplus capacity.

## 4: Changes that can be made outside of the statutory process

LAs and GBs of mainstream maintained schools can make limited changes (see [part 2](#) for the exact detail) to their schools without following a statutory process, including some temporary changes; they are nevertheless required to adhere to the usual principles of public law. They MUST:

- act rationally;
- take into account all relevant and no irrelevant considerations; and
- follow a fair procedure.

The department expects that in making these changes, LAs and GBs will work together and will:

- liaise with the trustees of the school, and in the case of schools designated as having a religious character the diocese or relevant diocesan board, or any other relevant faith body, to ensure that a proposal is aligned with wider place planning/organisational arrangements, and that any necessary consents have been gained;
- not undermine the quality of education provided or the financial viability of other 'good' and 'outstanding' schools in the local area;
- not create additional places in a local planning area where there is already surplus capacity in schools, taking the quality and diversity of the provision into account as well as cross boundary impacts; and
- ensure open and fair consultation with parents, any affected educational institutions in the area (e.g. primary, secondary, special schools, sixth form and FE colleges as required) and other interested parties. The [consultation principles guidance](#) can be referenced for examples of good practice.

Before making any changes GBs should ensure that:

- they have consulted with the LA to ensure the proposal is aligned with local place planning arrangements
- they have secured any necessary funding;
- they have identified suitable accommodation and sites;

- they have secured planning permission and/or agreement on the transfer of land where necessary<sup>8</sup>. The proposal can be approved subject to planning permission being granted;
- they have the consent of the site trustees or other land owner where the land is not owned by the GB;
- where a school is designated as having a religious character, they have the consent of the trustees of the school, the diocese or relevant diocesan board, or any other relevant faith body, where appropriate; and
- the admissions authority is content for the published admissions number (PAN) to be changed where this forms part of expansion plans, in accordance with the School Admissions Code.

Once a decision on the change has been made, the proposer (i.e. LA or GB) is responsible for making arrangements for the necessary changes to be made to the school's record in the department's [GIAS](#) system. These changes must be made no later than the date of implementation for the change and can be input in advance, once a decision is made.

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<sup>8</sup> Including, where necessary, approval from the Secretary of State for change to the use of playing field land under Section 77(1) of the SSFA 1998.

## 5: Statutory process: prescribed alterations

The statutory process for making prescribed alterations to schools has four stages:

Stage	Description	Timescale	Comments
Stage 1	Publication (statutory proposal/notice)		
Stage 2	Representation (formal consultation)	Must be 4 weeks	As set out in the 'Prescribed Alterations' regulations
Stage 3	Decision	LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator	Any appeal to the adjudicator must be made within 4 weeks of the decision
Stage 4	Implementation	No prescribed timescale	It must be as specified in the published statutory notice, subject to any modifications agreed by the decision-maker

Although there is no longer a statutory 'pre-publication' consultation period for prescribed alteration changes, there is a strong expectation that schools and LAs will consult interested parties in developing their proposal prior to publication, to take into account all relevant considerations. Schools should have the consent of the site trustees and where a school is designated as having a religious character the trustees of the school, the diocese or relevant diocesan board, or any other relevant faith body.

When considering making a prescribed alteration change, it is best practice to take timing into account, for example:

- by holding consultations and public meetings (either formal or informal) during term time, rather than school holidays and, where appropriate, extend the consultation period if it overlaps school holidays etc;
- plan where any public and stakeholder meetings are held to maximise response;
- take into account the admissions cycle for changes that will impact on the school's admission arrangements.

A number of changes can impact admissions necessitating reductions in PAN, new relevant age groups for admission or the adoption of revised admission criteria. Changes to admission arrangements can be made by the admission authority in one of two ways:

- the consultation on changing the admission arrangements (as set out in the [School Admissions Code](#)) takes place sufficiently in advance of a decision on the prescribed alteration so that the change to admissions can be implemented at the same time as the proposals; or
- a variation is sought, where necessary, in view of a major change in circumstances, from the [Schools Adjudicator](#) so that the changes to the admission policy can be implemented at the same time as the prescribed alteration is implemented.

Decision-makers should, so far as is possible, co-ordinate with the admission authority, if different, to ensure they avoid taking decisions that will reduce a PAN or remove a relevant age group for admission after parents have submitted an application for the following September (e.g. 31 October for secondary admissions or 15 January for primary admissions).

## Publication

A statutory proposal must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. [Annex A](#) sets out the minimum that this should include. The proposal should be accessible to all interested parties and should therefore use 'plain English'.

Where the proposal for one change is linked to another, this should be made clear in any notices published. Where a proposal by a LA is 'related' to a proposal by other proposers (e.g. where one school is to be enlarged because another is being closed) a single notice could be published.

The full proposal must be published on a website (e.g. the school or LA's website) along with a statement setting out:

- how copies of the proposal may be obtained;
- that anybody can object to, or comment on, the proposal;
- the date that the representation period ends; and
- the address to which objections or comments should be submitted.

A brief notice (including details on how the full proposal can be accessed e.g. the website address) must be published in a local newspaper. If the proposal is published by a GB then notification must also be posted in a conspicuous place on the school premises and at all of the entrances to the school.

Within one week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out in the paragraph above to:

- the GB/LA (as appropriate);
- the parents of every registered pupil at the school - where the school is a special school;
- if it involves or is likely to affect a school which has been designated as having a religious character:
  - the local Church of England diocese;
  - the local Roman Catholic diocese; or
  - the relevant faith group in relation to the school;
- proposals affecting a special school should go to any LA that has commissioned a place at the school (i.e. all relevant authorities who have made an out of county/borough placement there); and
- any other body or person that the proposer thinks is appropriate e.g. any affected educational institutions in the area.

Within one week of receiving a request for a copy of the proposal, the proposer must send a copy to the person requesting it.

There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation. However, proposers will be expected to show good reason (for example an authority-wide reorganisation) if they propose a timescale longer than three years.

## **Representation (formal consultation)**

The representation period must last for four weeks from the date of the publication. During this period, any person or organisation can submit comments on the proposal to the LA to be taken into account by the decision-maker. It is also good practice for representations to be forwarded to the proposer to ensure that they are aware of local opinion.

## Decision

The LA will be the decision-maker in all cases except where a proposal is ‘related’ to another proposal that must be decided by the [Schools Adjudicator](#)<sup>9</sup>.

Decision-makers will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all the responses received. Decision-makers should not simply take account of the numbers of people expressing a particular view. Instead, they should give the greatest weight to responses from those stakeholders likely to be most affected by a proposal – especially parents of children at the affected school(s).

Decisions must be made within a period of two months of the end of the representation period or they must be referred to the Schools Adjudicator.

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with modifications, having consulted the LA and/or GB (as appropriate); or
- approve the proposal, with or without modification – subject to certain conditions<sup>10</sup> (such as the granting of planning permission) being met.

A proposal can be withdrawn by the proposer at any point before a decision is taken. When doing so, the proposer must send written notice to the LA or the GB (as appropriate); or the Schools Adjudicator (if the proposal has been sent to them). A notice must also be placed on the website where the original proposal was published.

Within one week of making a decision the LA must publish their decision and the reasons for it, on the website where the original proposal was published and send copies to:

- the LA (where the Schools Adjudicator is the decision-maker);
- the Schools Adjudicator (where the LA is the decision-maker);

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<sup>9</sup> For example where a change is conditional on the establishment of a new school under section 10 or 11 of EIA 2006 (where the Schools Adjudicator may be the default decision maker).

<sup>10</sup> The prescribed events are those listed in paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations.

- the GB/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;
- the local Roman Catholic diocese;
- the parents of every registered pupil at the school – where the school is a special school; and
- any other body that they think is appropriate (e.g. other relevant diocese or diocesan board, faith organisation and any affected educational institutions in the area).

If the [Schools Adjudicator](#) is the decision-maker they must notify the persons above of their decision, together with the reasons, within one week of making the decision. Within one week of receiving this notification the LA must publish the decision, with reasons, on the website where the original proposal was published.

## Related proposals

Where proposals appear to be related to other proposals, the decision-maker must consider the related proposals together. A proposal should be regarded as related if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal.

## Conditional approval

For many types of proposal, decision-makers may make their approval conditional on certain prescribed kinds of events<sup>11</sup>. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date expires, that the condition will be met later than originally thought.

The proposer should inform the decision-maker when a condition is met. If a condition is not met by the date specified, the proposal should be referred back to the decision-maker for fresh consideration.

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<sup>11</sup> Under paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations

## **Education standards and diversity of provision**

Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents, raise local standards and narrow attainment gaps.

## **Equal opportunities issues**

The decision-maker must comply with the Public Sector Equality Duty (PSED), which requires them to have 'due regard' to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

Further information on the considerations can be found on the [Equality and Human Rights Commission](#) website.

## **Community cohesion**

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from, and about each other; by encouraging through their teaching, an understanding of, and respect for, other cultures, faiths and communities. When considering a proposal, the decision-maker should consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different groups within the community.

## **Travel and accessibility**

Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

The decision-maker should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes. A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

Further information is available in the statutory [Home to school travel and transport guidance](#) for LAs.

## Funding

The decision-maker should be satisfied that any necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees of the school, diocese or relevant diocesan board) have given their agreement. A proposal **cannot** be approved conditionally upon funding being made available.

Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available; nor can any allocation ‘in principle’ be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

## Rights of appeal against a decision

The following bodies may appeal to the Schools Adjudicator against a decision made by a LA decision-maker, within four weeks of the decision being made:

- the local Church of England diocese;
- the local Roman Catholic diocese; and
- the governors and trustees of a foundation, foundation special or voluntary school that is subject to the proposal.

On receipt of an appeal, a LA decision-maker must then send the proposal, representations received and the reasons for their decision to the Schools Adjudicator within one week of receipt. There is no right of appeal on determinations made by the Schools Adjudicator.

## Implementation

The proposer must implement a proposal in the form that it was approved, taking into account any modifications made by the decision-maker.

## Modification post determination

Proposers can seek modifications from the decision-maker before the approved implementation date. However, proposals cannot be modified to the extent that new proposals are substituted for those that have been published.

Details of the modification must be published on the website where the original proposals were published.

## Revocation of proposals

If the proposer no longer wants to implement an approved proposal, they must publish a revocation proposal to be relieved of the duty to implement, as set out in the Prescribed Alterations Regulations.

## Land and buildings

### Foundation, foundation special or voluntary controlled schools

Where a LA is required to provide a site for a foundation, foundation special or voluntary controlled school, the LA must<sup>12</sup>:

- transfer their interest in the site and in any buildings on the site which are to form part of the school's premises to the trustees of the school, to be held by them on trust for the purposes of the school; or
- if the school has no trustees, to the GB, to be held by that body for the purposes of the school.

In the case of a dispute as to the persons to whom the LA is required to make the transfer, the adjudicator will make a decision.

### Voluntary aided schools

Where a LA is required to provide a site for a voluntary aided school, they must transfer their interest in the land to the trustees of the school, and must pay the reasonable costs to the GB in connection with the transfer.

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<sup>12</sup> Under paragraph 17 of schedule 3 of the Prescribed Alterations Regulations

## **School premises and playing fields**

Under the School Premises (England) Regulations 2012, all schools maintained by local authorities are required to provide suitable outdoor space in order to enable physical education to be provided to pupils in accordance with the school curriculum; and for pupils to play outside safely.

Guidelines setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.

## 6: Statutory process: foundation proposals

### Changing category to foundation, acquiring a foundation trust and/or acquiring a foundation majority

A 'foundation trust school' is a foundation school with a charitable foundation complying with the requirements set out in SSFA 1998<sup>13</sup>. These include that the foundation trust must have a charitable purpose of advancing education and must promote community cohesion.

The term 'acquire a foundation majority' means acquiring an instrument of government whereby the school's foundation trust has the power to appoint a majority of governors on the GB.

Where a school's GB considers changing category to foundation or acquiring a foundation trust and/or acquiring a foundation majority on the school's GB, the following five-stage statutory process must be followed:

Stage	Description	Timescale	Comments
Stage 1	Initiation		The GB considers a change of category to foundation/acquisition of a foundation trust/acquisition of a foundation majority
Stage 2	Publication		Having gained consent where appropriate
Stage 3	Representation (formal consultation)	Must be 4 weeks	As set out in the prescribed alteration regulations. The LA may refer a foundation trust proposal to the Schools Adjudicator during this period if it considers the proposal to have a negative effect on standards at the school
Stage 4	Decision	The GB must decide within 12 months of the date of publication	Unless the LA has referred the proposal to Schools Adjudicator at Stage 3
Stage 5	Implementation	No prescribed timescale	Must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker

<sup>13</sup> Section 23A

## Initiation

For a proposal to change the category of a school to a foundation school, the GB should inform the LA in writing, at least seven days in advance of a meeting, if a motion to consult on a change of category proposal is to be discussed.

Before the GB can publish a proposal to change category from a voluntary school to a foundation school, the existing trustees and whoever appoints the foundation governors must give their consent.

## Publication

A statutory proposal must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. Part 1 of [Schedule 1 to the Prescribed Alterations Regulations](#) specifies the information that the statutory proposal must contain. Further details on the publication stage can be found in [Part 5](#).

## Representation (formal consultation)

The representation period starts on the date of the publication of the proposal and must last four weeks. During this period, any person or organisation can submit comments on the proposal to the GB, to be taken into account when the decision is made.

During the representation period, the LA has the power to require the referral of a proposal to acquire a foundation trust/foundation majority to the [Schools Adjudicator](#) for decision, if they consider it will have a negative impact on standards at the school.

The LA does not have this power in respect of a proposal solely to change the category to foundation<sup>14</sup>.

Where a proposal is referred to the [Schools Adjudicator](#), the GB must forward any objections or comments it has received to the Schools Adjudicator within one week of the end of the representation period.

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<sup>14</sup> However, where such a proposal is related to a proposal to acquire a trust, then the whole set of proposals will be referred to the Schools Adjudicator.

## Decision

Unless a proposal has been referred to the Schools Adjudicator (as set out above), the GB will be the decision-maker and must make a decision on the proposal within 12 months of the date of publication of the proposal.

Where a proposal to acquire a foundation trust or a foundation majority is linked to a proposal to change category to a foundation school, they will be decided together.

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with modifications, having consulted the LA;
- approve the proposal with or without modifications but conditional upon:
  - the making of any scheme relating to any charity connected with the school; and
  - the establishment of a foundation<sup>15</sup>.

Where the LA has referred a proposal to acquire a foundation trust/foundation majority to the Schools Adjudicator for decision, any related proposal(s) (including a change of category to foundation) will also fall to be decided by the Schools Adjudicator.

Decision-makers should consider the impact of changing category to foundation school, and acquiring or removing a foundation trust on educational standards at the school. In assessing standards at the school, the decision-maker should take account of recent reports from Ofsted and a range of performance data. Recent trends in applications for places at the school (as a measure of popularity) and the local reputation of the school may also be relevant context for a decision.

If a proposal is not considered strong enough to significantly improve standards at a school that requires it, the decision maker should consider rejecting the proposal. Foundation trusts have a duty<sup>16</sup> to promote community cohesion, and decision-makers should carefully consider the foundation trust's plans for partnership working with other schools, agencies or voluntary bodies.

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<sup>15</sup> As defined in section 23A of the SSFA 1998

<sup>16</sup> Under section 23A(6) of the SSFA 1998

## Foundation schools acquiring a foundation trust

For foundation trust schools the decision-maker should be satisfied that the following criteria are met for the proposal to be approved:

- the proposal is not seeking for a school to alter, acquire, or lose a designated religious character. These alterations cannot be made simply by acquiring a foundation trust;
- the necessary work is underway to establish the foundation trust as a charity and as a corporate body; and
- that none of the foundation trustees are disqualified from exercising the function of foundation trustee, either by virtue of:
  - disqualifications from working with children or young people;
  - not having obtained a criminal record check certificate<sup>17</sup>;
  - [Charities Act 2011](#)<sup>18</sup> which disqualify certain persons from acting as charity trustees.

## Suitability of partners

Decision-makers will need to be satisfied of the suitability of foundation trust partners and members. They should use their own discretion and judgement in determining on a case-by-case basis whether the reputation of a foundation trust partner is in keeping with the charitable objectives of a foundation trust, or could bring the school into disrepute. However, the decision-maker should make a balanced judgement, considering the suitability and reputation of the current/potential foundation trust.

The following sources may provide information on the history of potential foundation trust partners:

- [The Health and Safety Executive Public Register of Convictions](#)<sup>19</sup>
- [The Charity Commission's Register of Charities](#); and
- [The Companies House web check service](#).

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<sup>17</sup> Under section 113A of the Police Act 1997

<sup>18</sup> section 178 onwards

<sup>19</sup> Appearance on this database should not automatically disqualify a potential trust member; decision-makers will wish to consider each case on its merits

Within one week of making a decision the GB must publish a copy of the decision (together with reasons) on the website where the original proposal was published and send copies to:

- the LA;
- the local Church of England diocese; and
- the local Roman Catholic diocese.

Where a proposal has been decided by the GB and is to change the category of a VA school to foundation (with or without the acquisition of a foundation trust/foundation majority), the following bodies have the right of appeal to the [Schools Adjudicator](#)<sup>20</sup>:

- the LA;
- the local Church of England diocese(s); and
- the local Roman Catholic diocese(s).

## Conditional approval

For many types of proposal, decision-makers may make their approval conditional on certain prescribed kinds of events<sup>21</sup>. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date expires, that the condition will be met later than originally thought.

The proposer should inform the decision-maker when a condition is met. If a condition is not met by the date specified, the proposal should be referred back to the decision-maker for fresh consideration.

## Implementation

The GB must implement any approved proposal by the approved implementation date, taking into account any modifications made by the decision-maker.

Within one week of implementation, the GB must provide information to the Secretary of State<sup>22</sup> about foundation proposals that have been implemented. Copies of the statutory proposals and decision record should be submitted to

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<sup>20</sup> The specific circumstances in which a referral can be made are prescribed under paragraph 15 of Schedule 1 to the Prescribed Alterations Regulations

<sup>21</sup> under paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations

<sup>22</sup> Paragraph 18 of Schedule 1 of the Prescribed Alterations Regulations

[schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk) in order for the school record to be updated on GIAS.

## **Modification post determination**

Modifications can be made to a proposal by the governing body after determination but before implementation.

## **Revocation**

If the proposer no longer wants to implement an approved proposal they must publish a revocation proposal to be relieved of the duty to implement, as set out in Paragraph 19 of Schedule 1 of the Prescribed Alterations Regulations.

## **Governance and staffing issues**

Schedule 4 of the Prescribed Alterations Regulations provides further information on the requirements about:

- the revision or replacement of the school's instrument of government;
- reconstitution or replacement of the GB;
- current governors continuing in office;
- surplus governors;
- transfer of staff; and
- transitional admission arrangements.

## **Land transfer issues**

Requirements as to land transfers, when a school changes category or acquires a foundation trust, are prescribed in Schedule 5 of the Prescribed Alterations Regulations.

## Removing a foundation trust and/or removing a foundation majority

There are five or six statutory stages (depending on the proposal and circumstances) to remove a foundation trust and/or to reduce a foundation majority. It may be triggered in two different ways – either by a majority or a minority of the GB:

Stage	Description	Timescale	Comments
Stage 1	Initiation		<p><b>Majority</b> A majority of governors considers publishing a proposal to remove a foundation trust/reduce the number of governors appointed by the foundation.</p> <p>or</p> <p><b>Minority</b> A minority (of not less than a third of the governors) notify the clerk of the GB of their wish to publish a proposal to remove a foundation trust/reduce the number of governors appointed by the foundation</p>
Stage 2	Land Issues (applicable only to removal of trusts)	If not resolved within 3 months, disputes must be referred to the Schools Adjudicator	In cases of removing foundation trusts, the GB, trustees and the LA must resolve issues related to land and assets before a proposal is published
Stage 3	Consultation	<p><b>Majority</b> A minimum of 4 weeks is recommended.</p> <p>or</p> <p><b>Minority</b> No consultation required</p>	<p><b>Majority</b> It is for the GB to determine the length of consultation</p>
Stage 4	Publication and representation	<p><b>Majority</b> 6 week representation period.</p> <p>or</p> <p><b>Minority</b></p>	

Stage	Description	Timescale	Comments
		<p>Where there are no land or asset issues – publish within 3 months of receipt of notice by GB clerk – followed by a 6-week representation period.</p> <p>Where there are land issues, publish within 1 month of receipt of School Adjudicator's determination – followed by a 6-week representation period</p>	
Stage 5	Decision	Within 3 months	A proposal initiated by a minority of governors may not be rejected unless at least two-thirds of the GB are in favour of the rejection
Stage 6	Implementation	No prescribed timescale	But must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker

## Initiation

A proposal for removing a foundation trust and/or removing a foundation majority can be triggered by:

- a) a majority<sup>23</sup> of the GB or a committee deciding to publish a proposal. The decision to publish must be confirmed by the whole GB at a meeting held at least 28 days after the meeting at which the initial decision was made; or
- b) at least one-third<sup>24</sup> of the governors requesting in writing to the clerk of the GB, that a proposal be published. No vote of the GB is required as they are obliged to publish a proposal. To prevent on-going challenges

<sup>23</sup> Regulation 4 of the Removal Regulations

<sup>24</sup> Regulation 5 of the Removal Regulations

there are a number of prescribed circumstances<sup>25</sup> in which there is no obligation to follow the wishes of the minority of governors.

## Land and assets (when removing a foundation trust)

Before publishing proposals to remove a foundation trust, the GB must reach agreement with the trustees and LA on issues relating to the school's land and assets. Where such issues remain unresolved within three months of the initial decision (majority) or receipt of notice by the clerk (minority), they must be referred to the [Schools Adjudicator](#) for determination.

On the removal of the foundation trust, all publicly provided land held by the foundation trust for the purposes of the school will transfer to the GB<sup>26</sup>. Where the land originated from private sources (for example, where land was gifted on trust), the land will transfer to the GB in accordance with a transfer agreement, providing for consideration to be paid by the GB to the foundation trust where appropriate. However, there may be land which has benefited from investment from public funds which remains with the trustees under the transfer agreement.

Alternatively, there may have been investment by trustees in the publicly provided land or from public funding in the land provided by the trustees. In either of these cases, it may be appropriate for either the trustees or the public purse to be compensated. The possibility of stamp duty land tax may also need to be taken into account.

The Schools Adjudicator will announce its determination in writing to both parties.

## Consultation

Where a minority of governors initiated the process, this stage does not apply.

Where a majority of governors initiated the process, before publishing a proposal the GB must consult:

- families of pupils at the school;
- teachers and other staff at the school;
- the trustees and, if different, whoever appoints foundation governors;
- the LA;

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<sup>25</sup> See regulation 5(4) of the Removal Regulations

<sup>26</sup> By virtue of regulation 17(1) of the Removal Regulations

- the GBs of any other foundation or foundation special schools maintained by the same LA for which the foundation acts as a foundation;
- any trade unions who represent school staff;
- if the school has been designated as having a religious character, the appropriate diocesan authority or other relevant faith group in relation to the school;
- any other person the GB consider appropriate.

## Publication

Where the decision to publish a proposal was made by a majority of governors, the GB at this stage must decide whether to go ahead with publishing the proposal.

Where the decision to publish a proposal was made by a minority of governors and there are no land issues to be determined, the GB must publish the proposal within 3 months of the receipt of the notice by the clerk. If land issues were referred to the [Schools Adjudicator](#), the proposal must be published within 1 month of receipt of its determination.

Proposals to remove a foundation trust or to alter the instrument of government so that foundation governors cease to be the majority of governors must contain the information set out in [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#). Further details on the publication stage can be found in [Part 5](#).

At the same time as publishing the proposals, the GB must send copies of the proposals to the LA, trustees, and the Secretary of State via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk).

## Representation

The representation period starts on the date of the publication of the proposal and must last six weeks. During this period, any person or organisation can submit comments on the proposal to the GB to be taken into account when the decision is made.

Unlike the foundation trust acquisition process, there is no power for the LA to refer a proposal to the Schools Adjudicator to remove a school's foundation trust or to reduce the number of governors appointed by the foundation trust. However, GBs

must bear in mind that failure to follow the requirements of the statutory process could lead to a complaint to the Secretary of State under Section 496/497 of the Education Act 1996, and/or ultimately be challenged through judicial review.

## Decision

The GB is the decision-maker for a removal proposal and must determine the proposal within 3 months of the date of its publication.

If a proposal was brought forward by a majority of governors, then it may be determined by a majority vote of those governors present<sup>27</sup>.

If a proposal was brought forward by a minority of governors, then the GB may not reject the proposal unless two thirds or more of the governors indicate that they are in favour of its rejection<sup>28</sup>.

When deciding a proposal for the removal of a foundation trust, the GB should consider the proposal in the context of the original proposal to acquire the foundation trust, and consider whether the foundation trust has fulfilled its expectations. Where new information has come to light regarding the suitability of foundation trust partners, this should be considered.

All decisions must be taken in accordance with the processes prescribed in [The School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)<sup>29</sup>.

The GB must notify the relevant LA, trustees and the Secretary of State via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk) of their decision.

## Implementation

The GB is under a statutory duty to implement any approved proposal, as published, by the approved implementation date, taking into account any modifications made. In changing category, an implementation period begins when the proposal is decided and ends on the date the proposal is implemented. During this period the LA and GB are required to make a new instrument of government for the school, so enough time must be built into the timeframe for this to happen. The GB must then be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government taking into account the [School Governance \(Constitution\) \(England\) Regulations 2012](#).

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<sup>27</sup> As per the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

<sup>28</sup> As per regulation 11(2) of the Removal Regulations.

<sup>29</sup> Except as otherwise provided by the Removal Regulations.

When removing a foundation trust or a foundation majority, a governor may continue as a governor in the corresponding category (e.g. staff governor, parent governor) if that category remains under the new instrument of government. A member of a current GB who continues as a governor on these grounds holds office for the remainder of the term for which he or she was originally appointed or elected. Where a school with a religious character has no foundation trust, the GB must appoint partnership governors with a view to ensuring that the religious character of the school is preserved and developed in accordance with the School Governance (Constitution) (England) Regulations 2012. There is nothing to prevent the appointment of a former foundation governor being reappointed by the GB as a partnership governor.

The terms of the trust on which land is held for a voluntary or foundation school often include very specific provisions regarding the conduct of the school and the use of any fund held by the foundation trust for the use of the school and premises. When making a proposal to change category, proposers will need to consider whether the current terms on which the school's land is held on trust allows for the change in category proposed. If in doubt, or if a variation in the foundation trust is clearly necessary, promoters and the relevant site trustees are advised to make early contact with the Charity Commission to apply for the terms of the trust to be varied under the relevant trust law.

## **Modification of proposals**

Modifications can only be made to the implementation date and the proposed constitution of the governing body.

## Annex A: Information to be included in a prescribed alteration statutory proposal

A statutory proposal for making a prescribed alteration to a school must contain sufficient information for interested parties to make a decision on whether to support the proposed change. A proposal should be accessible to all interested parties and therefore use 'plain English'.

Proposers will need to be mindful of the factors that will inform the decision-makers assessment when determining the proposal.

As a minimum, the department would expect a proposal to include:

- school and LA details;
- description of alteration and evidence of demand;
- objectives (including how the proposal would increase educational standards and parental choice);
- the effect on other educational institutions within the area;
- project costs and indication of how these will be met, including how long-term value for money will be achieved;
- implementation plan; and
- a statement explaining the procedure for responses: support, objections and comments.

## Annex B: Further Information

This guidance primarily relates to:

- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) [www.legislation.gov.uk/uksi/2013/3110/contents/made](http://www.legislation.gov.uk/uksi/2013/3110/contents/made)
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#) [www.legislation.gov.uk/uksi/2007/3475/contents/made](http://www.legislation.gov.uk/uksi/2007/3475/contents/made)
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#) [www.legislation.gov.uk/uksi/2007/1287/contents/made](http://www.legislation.gov.uk/uksi/2007/1287/contents/made)
- [The Education and Inspections Act 2006](#) [www.legislation.gov.uk/ukpga/2006/40](http://www.legislation.gov.uk/ukpga/2006/40)
- [The School Standards and Framework Act 1998](#) [www.legislation.gov.uk/ukpga/1998/31/contents](http://www.legislation.gov.uk/ukpga/1998/31/contents)

It also relates to:

- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) [www.legislation.gov.uk/uksi/2013/3109/contents/made](http://www.legislation.gov.uk/uksi/2013/3109/contents/made)
- [The School Governance \(Constitution\) \(England\) Regulations 2012](#) [www.legislation.gov.uk/uksi/2012/1034/contents/made](http://www.legislation.gov.uk/uksi/2012/1034/contents/made)
- [The School Governance \(Constitution and Federations\) \(England\) \(Amendment\) Regulations 2014](#) [www.legislation.gov.uk/uksi/2014/1257/pdfs/uksi\\_20141257\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/1257/pdfs/uksi_20141257_en.pdf)
- [The School Governance \(Miscellaneous Amendments\) \(England\) Regulations 2015](#) [www.legislation.gov.uk/uksi/2015/883/pdfs/uksi\\_20150883\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/883/pdfs/uksi_20150883_en.pdf)
- [The School Governance \(New Schools\) \(England\) Regulations 2007](#) [www.legislation.gov.uk/uksi/2007/958/pdfs/uksi\\_20070958\\_en.pdf](http://www.legislation.gov.uk/uksi/2007/958/pdfs/uksi_20070958_en.pdf)
- [The School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#) [www.legislation.gov.uk/uksi/2013/1624/contents/made](http://www.legislation.gov.uk/uksi/2013/1624/contents/made)
- [The Childcare Act 2006](#) [www.legislation.gov.uk/ukpga/2006/21/contents](http://www.legislation.gov.uk/ukpga/2006/21/contents)
- [The School Premises \(England\) Regulations 2012](#) [www.legislation.gov.uk/uksi/2012/1943/contents/made](http://www.legislation.gov.uk/uksi/2012/1943/contents/made)

- [Making Significant Changes to an Existing Academy](#)  
[www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy](http://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy)
- [Academy/Free School Presumption – departmental advice](#)  
[www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption](http://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption)
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers](#)  
[www.gov.uk/government/publications/establishing-new-maintained-schools](http://www.gov.uk/government/publications/establishing-new-maintained-schools)
- [The School Admissions Code](#) [www.gov.uk/government/publications/school-admissions-code--2](http://www.gov.uk/government/publications/school-admissions-code--2)
- [Education Act 1996](#) [www.legislation.gov.uk/ukpga/1996/56/contents](http://www.legislation.gov.uk/ukpga/1996/56/contents)
- [Equality Act 2010](#) [www.legislation.gov.uk/ukpga/2010/15/contents](http://www.legislation.gov.uk/ukpga/2010/15/contents)
- [Police Act 1997](#) [www.legislation.gov.uk/ukpga/1997/50/contents](http://www.legislation.gov.uk/ukpga/1997/50/contents)
- [Charities Act 2011](#) [www.legislation.gov.uk/ukpga/2011/25/contents](http://www.legislation.gov.uk/ukpga/2011/25/contents)
- [Public Sector Equality Duty](#) [www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty](http://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty)
- [Home-to-school travel and transport - GOV.UK](#)  
[www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance](http://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance)
- [Get information about schools - GOV.UK](#) [www.get-information-schools.service.gov.uk/](http://www.get-information-schools.service.gov.uk/)
- [Consultation principles: guidance - GOV.UK](#)  
[www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)
- [School land and property: protection, transfer and disposal - GOV.UK](#)  
[www.gov.uk/guidance/school-land-and-property-protection-transfer-and-disposal](http://www.gov.uk/guidance/school-land-and-property-protection-transfer-and-disposal)

## Annex C: Contact details for RSC offices

- East and North East London - [RSC.EASTNELONDON@education.gov.uk](mailto:RSC.EASTNELONDON@education.gov.uk)
- North - [RSC.NORTH@education.gov.uk](mailto:RSC.NORTH@education.gov.uk)
- East Midlands and Humber - [EMH.RSC@education.gov.uk](mailto:EMH.RSC@education.gov.uk)
- Lancashire and West Yorkshire - [LWY.RSC@education.gov.uk](mailto:LWY.RSC@education.gov.uk)
- South Central England and North West London - [RSC.SCNWLON@education.gov.uk](mailto:RSC.SCNWLON@education.gov.uk)
- South East and South London - [RSC.SESL@education.gov.uk](mailto:RSC.SESL@education.gov.uk)
- South West - [RSC.SW@education.gov.uk](mailto:RSC.SW@education.gov.uk)
- West Midlands - [RSC.WM@education.gov.uk](mailto:RSC.WM@education.gov.uk)



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email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)  
write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

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